HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.1320 OF 2004 (MS)

Nandan Lal Shah S/o Late Ram Lal Sah
R/o Katyur Bazar, Bageshwar
District Bageshwar. .....Petitioner.

Versus

1. Executive Officer, Nagar Palika Parishad, District Bageshwar.
2. District Magistrate, District- Bageshwar.
3. Chief Judicial Magistrate, Bageshwar, District-Bageshwar.

.....Respondents.

Dated: 21.7.2006

Sri Nandan Arya, Counsel for the petitioner
Sri Syed Nadim, Counsel for the respondent no.1.
Standing Counsel for the respondent no. 2 & 3.

Hon'ble Rajesh Tandon, J.

Heard Sri Nandan Arya, Counsel for the petitioner, Sri Syed Nadim, Counsel for the respondent no.1 and Standing Counsel for the respondent no. 2 & 3.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 18.10.2003 & 07.08.2004 (Annexure No. 1 & 2 to the writ petition respectively) passed by the Chief Judicial magistrate, Bageshwar.

3. Briefly Stated, according to the petitioner, he is resident of the area which comes in the Nagar Palika, Bageshwar i.e. House No.23, Katyur Bazar Ward, Bageshwar and the house of the petitioner is 100 years old. He has submitted that before this assessment, the annual assessment of the house was Rs.2000/- and the house tax Rs. 100/- per year.

4. Assessment proceedings were drawn for the year, 2002-03 for a period of five years by the respondent no. 1/District Magistrate, Bageshwar and notice of same was served upon the petitioner for filing objections before the office of the authority concerned.

5. Thereafter, petitioner deposited the house tax on 20.06.2003 and preferred appeal being Appeal No. 8/2000 before the Court of Chief Judicial Magistrate, Bageshwar. The same was dismissed on 18.10.2003.

6. Against the said order, petitioner field review application being Review Application NO. 8/2003 before the Chief Judicial Magistrate, but the same was also dismissed. The petitioner has filed the present writ petition has submitted as under:-

1. Petitioner is ex-member of Nagar Palika Parishad, Bageshwar and the proceedings of the assessment of the petitioner's house made by the District Magistrate, Bageshwar is wholly illegal and as such direction to the Distinct Magistrate given in pursuance of the U.P. Gazette IInd Dec., 1972 for assessment is wholly illegal.
2. District Magistrate has assessed the property of the Chairman and members of the Nagar Palika, Bageshwar, which is wholly arbitrary.

7. A perusal of the order shows that the annual assessment of the house has been provided under section 140(1)(b) of the U.P. Municipalities Act, 1916, the same is quoted below:-

> *"Clause (b): in the case of a building or land not falling within the provisions of clause (a) the gross*

annual rent for which such building exclusive of furniture or machinery therein or such land is actually let, or here the building or land is not let or in the opinion of Board is let from a sum less than its fair letting value, might reasonably be expected to let from year to year."

8. In pursuance of the aforesaid section 140 of the Municipalities Act Rules have been framed by the Nagar Palika by a Gazette Notification dated 2nd December, 1972. Relevant rules are quoted below:-

"11. इस भवन कर का निर्धारण भावी पांच वर्षो के लिये बोर्ड द्वारा किया जायेगा और यह कार्य अक्तूबर मास में कर दिया जायेगा। कर निर्धारण का कार्य नगर पालिका के सदस्य पर गठित समिति करेगी अथवा बोर्ड चाहे तो इस कार्य को अपने अधीनस्थ अधिकारियों/कर्मचारियों से सम्पन्न करा कर कर निर्धारण की पुष्टि कर देगा। बोर्ड के अध्यक्ष एवं सदस्यों को जायदाद का कर निर्धारण जिला मजिस्ट्रेट द्वारा किया जायेगा।

इस पांच वर्ष की अवधि के अन्दर किसी मकान के खाली हो जाने या किराये में वृद्धि अथवा कमी हो जाने की स्थिति में जायदाद के स्वामी का यह कर्तव्य होगा कि वह इसकी लिखित सूचना 30 दिन के अन्दर लगर पालिका के कार्यालय में अधिशासी अधिकारी को दे दे।

बोर्ड के पास यह अधिकार सुरक्षित है कि यह किसी भी समय किसी भी भवन के मूल्यांकन में कमी वृद्धि एवं फेर बदल कर सकती है।

12––निम्न प्रकार के भवनों पर भवन कर निर्धारित नहीं किया जायेगा।

(अ) मंदिर, मस्जिद, गुरूद्वारा, निजी एवं कब्रिस्तान एवं धर्मशालायें।

(ब) सार्वजनिक अस्पताल, स्कूल, कालेजए जिनके स्वयं अपनी निजी विभागीय भवन है।

(स) समस्त भवन, जिनके स्वामी नगरपालिका बोर्ड बागेश्वर है।

(द) ऐसे भवन एवं कुटियायें, जिनमें साधू एवं साधुआइनें निवास करती हों।

नोट–– धर्मशालायें केवल वही कर मुक्त होंगी जेा जनहित में निःशुल्क प्रयोग होती हैं।

13––यह कर जायदाद के वार्षिक मूल्यांकन की धनराशि के योग पर 5 प्रतिशत की दर से किया जायेगा।"

9. Bothe the parties have submitted that the notification dated 2nd December, 1972 and 7th December, 2002 (by-laws framed on 14th June, 2002) have already been adopted by the Uttaranchal Nagar Palika Parishad.

10. So far as rule 11 is concerned, according to the Rules framed by the Municipalities Act, the assessment has been done on the basis of increase of 5% of the vale.

11. As will appear from the aforesaid, so far as member of the Board and Chairman are concerned, the assessment shall be made by the District Magistrate. As will appear that the house Tax was assessed accordingly to the Rules of the Municipalities Act.

12. Petitioner has filed the notification under section 299(1) of the U.P. Municipal Act, 1916 dated 14.06.2002 by which assessment of the property of the Chairman and member of the Nagar Palika Board has been performed by the District Magistrate.

13. According to the Government approved valuer, the total value of the house had been given to the extent of Rs. 8,350/- and the house tax has been assessed to the extent of Rs. 418/- per year in accordance with the rule.

14. In view of the above, I find no illegality while making the aforesaid assessment. Respondent no.2 is directed to recover all taxes after certifying as to whether 5% has been calculated on the basis of total value of the increased assessment according to the rule.

15. Subject to the above, writ petition is dismissed. No order as to costs.

Rajesh Tandon, J.

Dated: 21.7.2006
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